

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

**TONIE SMITH, INDIVIDUALLY AND ON  
BEHALF OF THE WRONGFUL  
DEATH BENEFICIARIES OF GARY SMITH,  
DECEASED,**

**PLAINTIFF,**

**VS.**

**CIVIL ACTION NO. 2:04CV55-P-A**

**PACCAR, INC. D/B/A PETERBILT MOTORS  
COMPANY; ET AL.,**

**DEFENDANTS.**

**ORDER**

This matter comes before the court upon Defendant Peterbilt of Memphis, Inc.'s Motion to Dismiss Pursuant to Mississippi Code Section 11-1-64 [32-1]. Upon due consideration of the motion and the responses filed thereto, the court finds as follows, to-wit:

Peterbilt of Memphis, Inc. filed the instant motion on June 14, 2004. On July 28, 2004, Peterbilt of Memphis, Inc. filed a motion to hold in abeyance the ruling on their motion to dismiss until they had additional time in which to conduct discovery. That court granted that motion on February 8, 2005. Furthermore, on July 27, 2005, the court entered an order extending the discovery deadline in this case to November 15, 2005.

As such, Peterbilt of Memphis, Inc. has had ample time in which to conduct discovery regarding whether they should be dismissed pursuant to Miss. Code. Ann. § 11-1-64, the innocent-seller statute, in light of the information provided in the plaintiff's amended response to the motion to dismiss in which she cites a notice from the manufacturer to the seller, Peterbilt of Memphis, Inc., of a device that could be installed on the subject vehicle alleged to prevent the very type of accident that occurred in this case. At this time, some eight months after the discovery deadline, Peterbilt of

Memphis, Inc. has filed no supplements to their motion to dismiss.

Having considered Peterbilt of Memphis, Inc.'s motion to dismiss, the plaintiff's amended response thereto, and Peterbilt of Memphis, Inc.'s reply, the court finds that the motion is not well-taken and should be denied.

**IT IS THEREFORE ORDERED AND ADJUDGED** that Defendant Peterbilt of Memphis, Inc.'s Motion to Dismiss Pursuant to Mississippi Code Section 11-1-64 [32-1] is **DENIED**.

**SO ORDERED** this the 6<sup>th</sup> day of March, A.D., 2006.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE